IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2216 OF 1991

Parvatibai Dudhgikar,
since deceased, through
her legal heir
1-A Shri Vitthal Digambar Dudhgikar
and anr., Petitioners

Vs

1. Shri Shivram Maruti Mugale,
since deceased through legal
heir Shri Nagnath Shivram Mugale
and ors. .. Respondents

Mr. Venkatesh A Shastri, for the petitioners.
Ms S.M.Dandekar, for respondent nos 1A,3,5,& 6
Mr M.H.Solkar, AGP for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 24th November, 2004.

ORAL ORDER:

1. This petition is directed against the judgment and order dated 20.4.1990 passed by the Maharashtra Revenue Tribunal (for short, "MRT") by which the revision application filed by the respondents-tenants was allowed and the orders passed by the authorities below dated 5.7.1989 and 7.11.1988 were set aside. The instant proceedings arise out of the application filed by the petitioner-landlady on 22.9.1986 seeking possession of the land in question under sections 14 and 25 read with section 29 of the Bombay Tenancy and Agricultural Lands Act (for short, "Tenancy Act").

2. The case set up by the petitioners is that on 4.10.1956 there was a partition in the family of deceased landlady-Parvatibai Dudhgikar in which the property in question was allotted to her share and she had become exclusive owner of the said land. Admittedly, the landlady was widow on 1.4.1957. One Maruti-father of respondent nos 1 to 3 and 5 to 6, was a tenant in the said land. Since the deceased landlady was widow on 1.4.1957, the tillers' day stood postpone as contemplated under section 32F(1)(a) of the Tenancy Act. In view of this, according to the petitioners, the respondents-tenants were liable to pay a rent to the landlady and since they failed to do so from the years

1975-76 to 1985-86, despite the intimations dated 12.6.1983, 26.8.1984, 25.11.1985 and 7.5.1986, they are liable to be evicted on the ground as available under section 14 and 25 read with section 29 of the Tenancy Act. The application filed by the petitioner landlady was allowed by the ALT and the Tahasildar, South Solapur, by his judgment and order dated 7.11.1988. The order was carried in appeal. The Appeal bearing no.4 of 1989 filed by the respondents-tenants was dismissed by the Sub-Divisional Officer on 5.7.1989. Being aggrieved by the judgment and order passed by the appellate authority, the respondents-tenants filed the revision before the MRT on 19.9.1989 which allowed the revision by its judgment and order dated 20.4.1990. Hence, the landlady filed the present petition. The landlady died some time in 1996, i.e. during pendency of the instant petition.

3. The MRT seems to have interfered with the concurrent findings recorded by the authorities below since they did not appreciate the material in judicial manner while dealing with the application filed by the deceased landlady and committed manifest error of law. It is true that the MRT is not expected to reassess the material and seek to reach the conclusion different from

the one reached by the courts below, if one reached by the courts below was reasonably possible on the material. If the discretion has been exercised by the authorities below reasonably and in judicial manner, the fact that the MRT can take a different view may not justify interference in the orders passed by the courts below. However, in the present case, since the authorities below committed manifest error of law, the MRT, in my opinion, has rightly interfered with the concurrent findings and allowed the revision, for the reasons recorded in the later part of the judgment.

4. I examined the order of the MRT keeping in view the case set up by the petitioners as it is. It is not disputed that the deceased landlady had filed the application under section 31 read with section 29 of the Tenancy Act for possession of the land in question for personal cultivation. That application was rejected on 23.9.1960. The matter was further carried upto the High Court and the landlady ultimately lost in the said proceedings. Admittedly, that all happened prior to 1975. The respodents-tenants had disputed that there was a partition in the family of the deceased-landlady and the land in question was allotted to her and she became exclusive owner of the same on 1.4.1957. I do

not propose to enter into that controversy as I am proceeding on the assumption that there was a partition prior to 1.4.1957, though the MRT has held that there was no partition and the landlady was not entitled to avail of the benefits of the provisions of Section 32F. In my opinion, whether there was a partition or not, that would not change the view that I am taking in this petition.

5. According to the petitioners, the tillers' day was postponed since the landlady was widow on 1.4.1957 and, therefore, the tenant did not become deemed purchaser and continued in possession of the said land as tenant. This argument will have to be appreciated in the light of the admitted fact that the deceased landlady's attempt to seek possession under section 31 read with section 29 of the Tenancy Act failed upto the High Court.The MRT held that on the date on which the application of the petitioner-landlady under section 31 of the Tenancy Act was rejected, the respondents-tenants became the deemed purchaser and, therefore, the question of payment of rent after 1975 does not arise. In other words,the respondents-tenants cannot be held defaulter after 1975 because they became deemed purchasers on the date on which the application under section 31 of the

Tenancy Act was rejected. The only submission made by Mr Shashtri,learned counsel for the petitioners, is that the deceased landlady was alive till 1996 and therefore during her lifetime the tenants could not have become

deemed purchaser as contemplated under section 32F of the Tenancy Act.

6. The question whether the tenants' claim of ownership is governed by the first proviso to section 32F(1)(b) or section 32F(1)(a) of the Tenancy Act in the event the landlady avails of and exhausts her right of resumption under section 31, was considered by the Division Bench of this Court in **Nago Dattu Mahajan Vs.Smt.Yesuodabai Huna Mahajan, 1975 Bombay Law Reporter 427.** In that case, this Court, was dealing with the petition by the tenant. Respondent No.1, widow, had applied for possession of the land, for personal cultivation, under section 31(1) read with 29 of the Act and her application was rejected on 26.12.1958 and this order was finally confirmed by the Tribunal. The petitioner-tenant claimed that he had become the statutory purchaser of the land on June 15, 1964 under section 32(1)(b). The A.L.T accepted his claim and fixed the price of the land under section 32G of the

said Act. That order was confirmed in appeal. The respondent-landlord's revision to the Revenue Tribunal, however, was allowed. The Tribunal held that the claim was covered by section 32F(1)(a) of the Act under which a tenant cannot claim automatic vesting of ownership but he continues to be such tenant till widow dies and certain stages are completed thereafter. The Tribunal followed the unreported judgment in **Havabibi A Gulam Chafekar Vs.Shaikh Ebrahim Babu Tambu,** (1969) Special Civil Application No.2797 of 1968, decided by Bal J., on February 5,1968. Since there was a conflicting opinion as to whether the right to purchase of a tenant of every landlord specified in s.32F(1)(a), is regulated by this provision even if such landlord avails of his right of resumption under section 31(1). Reference was made to the Division Bench which considered the question whether the tenant's claim to ownership is governed by the first proviso to section 32(1)(b) or section 32F(1)(a) of the Act in the event the landlord avails of and exhausted his right of resumption under section 31. This Court, after interpreting the relevant provisions, has observed thus :

> "Such landlords thus have a choice to avail either of these two provisions for

resumption,i.e. s.31(1) or s.31(3), exercise of which depending on the circumstances in which each of them finds himself. No landlord, however, can avail of both the provisions, S.31 having been designed to afford only one last opportunity of resumption. Any such landlord thus cannot seek resumption under s.31(3) again if he or she has availed of the right under s.31(1). Section 32F(1)(a), being merely corrollary and counterpart of s.31(3) its application also would depend on such landlord's choice and competency to avail of the provisions of s.31(3). Consequently its provision cannot be attracted when the right to resume under s.31(1) is availed of and on such opportunity is exhausted by such disabled landlord, i.e. minor, widow etc. as specified in these two sections. Section 32F(1)(a) thus will not be attracted, when the widow or any other such disabled landlord seeks resumption under s.31 (1) before March

31, 957, without regard to whether he or she fails or succeeds in the attempt. It will not apply even if such an application for resumption is ejected. Due to exhaustion of such right the landlord cannot avail of s.31(3) inspite of being a disabled landlord. Inapplication of s.31(3) results in inapplication of s.32F(1)(a) also. Like the tenants of every other landlord applying under section 31 (1), the tenant of such a landlord also would become an automatic purchaser of the lands on the date of final rejection of such application, as under the proviso to s.32(1)(b)."

"... Where, as in the case before us, the widow or other disabled landlord contemplate under s.31(3), avails herself or himself of the right of resumption by recourse to s.31(1), she or he ceases to be so entitled to claim the resumption thereafter, without regard to whether such application results in resumption of the land or

not. Her or his being thus entitled to claim resumption again after April 1, 1957, therefore, cannot even remotely be conceived. This itself prevents the application of s.32F(1)(a) and also the further postponement of the right to purchase contemplated thereunder and entitles the tenant to claim the benefit of the first proviso to s.32(1)(b) and become a statutory purchaser on rejection of the application under s.31(1)."

6.1 In **Vijay Krishnaji case** (supra) this Court followed the judgment in **Nago Dattu's** case and in paragraph 8 thereof observed thus ;

"The ratio of the decision is clear that if the landlord has availed of and exhausted the right of resumption, the landlord cannot be treated as disabled landlord since the fact that he or she is able is established by fact of his or her having made an application. In fact the Division Bench has observed that due to exhaustion of such right, the

> landlord cannot avail of section 32F(1)(a). Therefore, it makes no difference if the landlord's or landlady's application is abandoned as withdrawn instead of being rejected. In either case the remedy is exhausted and the landlord or landlady cannot be treated as disabled."

6.2 It is thus clear that the landlady, once having availed of and exhausted an opportunity of resumption under section 31, provisions of section 32F(1)(a) cannot be attracted indiscriminately merely because the tenant-landlord happened to be a disabled landlord, i.e. minor or widow etc as specified in these two sections. Section 32F(1)(a) thus will not be attracted when the widow or any other such disabled landlord seeks resumption under section 31 before March 31, 1957, without regard to whether he or she succeeds in the attempt.

7. In view of the law laid down by this Court in the aforementioned judgment, I have no hesitation in holding that the respondent-tenant became the deemed purchaser on the date on which the landlady's application under section 31 seeking resumption of the land was rejected. This itself prevents the application of section

32F(1)(a) and also further postponement of right to purchase contemplated thereunder and entitles the tenant to claim the benefit of the first proviso to section 31(1)(b) and became a statutory purchaser on rejection of the application under section 31(1) of the Tenancy Act. In the circumstances, I find no reason to interfere in the order passed by the Tribunal. The writ petition, therefore, fails and is dismissed. No order as to costs.

(D.B.Bhosale,J.)

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.2216 OF 1991

Date of Judgment:

24th November, 2004

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?